



**THE ATTORNEY GENERAL  
OF TEXAS**

**JIM MATTOX  
ATTORNEY GENERAL**

March 25, 1988

LO-88-6

Honorable George Pierce  
Chairman  
Committee on Urban Affairs  
Texas House of Representatives  
P.O. Box 2910  
Austin, Texas 78769

Dear Representative Pierce:

You have requested an opinion on the following question:

Does state law prohibit a municipality from  
leasing public property to a private  
organization which uses its property in a  
racially discriminatory manner? Would such  
a lease be void?

The basis of your request directly involves the Corpus Christi Yacht Club ("Yacht Club"). A letter from the League of United Latin American Citizens ("LULAC"), which you submit attached to your request letter, states that a study of the 1987 roster of the Yacht Club shows that only one American of Mexican origin is included among the membership, and that apparently no Black American is a member of the Yacht Club. The letter further states that the City of Corpus Christi sold the old Corpus Christi Municipal Wharf to the Yacht Club. There is uncertainty as to whether the sale was valid, and the letter from LULAC points to evidence that the Yacht Club uses public land.

You have brought to my attention a Corpus Christi City Council ordinance which prohibits "any person, firm, association or corporation . . . within the City of Corpus Christi, to withhold from or deny any person, because of race, color or ethnic origin, any of the advantages, facilities or services offered to the general public by a

place of public accommodation." Corpus Christi, Texas, Ordinance to Regulate Discrimination in Places of Public Accommodation, § 2 (Dec. 2, 1964) ("ordinance"). The ordinance exempts "any hotel, motel, restaurant, place of amusement which is operated as a bona fide private club if the facilities and services are restricted to members of such club and their invited guests." Ordinance, § 6.

Although the city ordinance, on its face, does not reach private organizations, public accommodations laws have been, and are being, used to reach discrimination by private clubs where they lose their status as bona fide private clubs and assume a "public" character. *See Board of Directors of Rotary International v. Rotary Club of Duarte*, 107 S. Ct. 1940, 1948 (1987) ("*Rotary Club of Duarte*") (application of California equal accommodations act to California Rotary Clubs does not violate the First Amendment right of association of Rotary Club members because it serves a compelling interest of the highest order); *cf. Commonwealth of Pennsylvania, Human Relations Commission v. Loyal Order of Moose, Lodge No. 107*, 448 Pa. 451, 294 A.2d 594, 597 (1972) (a fraternal organization that opened its dining room to non-members, subject only to the limitations that they be of the Caucasian race and invited by a member, brought itself within the ambit of the Pennsylvania Human Relations Act as a place of public accommodation).

In a recent case, which is pending before the United States Supreme Court, *see* 56 U.S.L.W. 3049, the New York Court of Appeals held that New York City's public accommodations ordinance, prohibiting discrimination in private clubs which have lost their "distinctly private" status by assuming a statutorily defined public character, is a valid constitutional exercise of the city's police power. *New York State Club Association v. City of New York*, 505 N.E.2d 915, 513 N.Y.S.2d 349, 353-54 (1987).


These cases indicate a willingness by the courts to apply public accommodations laws to alleged private clubs, like the Yacht Club, if it can be shown that the relationship among the club members is not the type of intimate or private relationship that would warrant constitutional protection. The Corpus Christi ordinance, recognizing the city's compelling interest in eliminating discriminatory practices based on race, color or ethnic origin, can serve as a basis for reaching

the discriminatory practices of the Yacht Club. The essential question is whether the Yacht Club assumes a sufficient public character which results in the forfeiture of its private club exemption.

Determination of public character involves a case by case analysis of, among other things, a club's selection process and guest policies. Several judicial factors have been articulated to assist in making the determination as to whether a club is truly private. *Rotary Club of Duarte* stated the basic test: "[i]n determining whether a particular association is sufficiently personal or private to warrant constitutional protection, we consider factors such as size, purpose, selectivity, and whether others are excluded from critical aspects of the relationship." *Rotary Club of Duarte*, 107 S. Ct. 1946 (1987). See *Roberts v. United State's Jaycees*, 468 U.S. 609 (1984); see also *Burns, The Exclusion of Women From Influential Men's Clubs: the Inner Sanctum and the Myth of Full Equality*, 18 Harv. C.R.-C.L. L. Rev. 321, 377 (1983) (factors include: member selection process and criteria, guest policies, and business characteristics).

An aggrieved party may use the Corpus Christi public accommodations law to reach the discriminatory practice of the Corpus Christi Yacht Club if it can be shown that the club has a public character. This requires the application of the factors set out in *Rotary Club of Duarte*. Once the club is found to possess a sufficient public character it forfeits its bona fide private club exemption and is subject to the anti-discrimination ordinance.

Sincerely,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive style with a large, stylized "J" and "M".

JIM MATTOX  
Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

JM/JPG/av